

STATE OF TENNESSEE

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Opinion No. 04-106

Juvenile Court's Subject Matter Jurisdiction to Award Joint Custody

QUESTIONS

1. Does the Juvenile Court possess subject matter jurisdiction to award joint custody or guardianship to petitioning parties when the action is based solely on a petition for joint custody arising from an agreement of the parties in which the petitioners make no allegations of dependency, neglect, delinquency, unruliness, and when there is no previous history with a Juvenile Court?

2. If the Juvenile Court does have jurisdiction to award joint custody or guardianship to petitioning parties based solely on their agreement in such a case, does the Juvenile Court have the jurisdiction to do so where one of the petitioners has custody by virtue of an adoption or surrender and the other is not related to the child?

OPINIONS

1. No. Except in cases involving the determination of custody of children born out of wedlock, the Juvenile Court lacks subject matter jurisdiction to award joint custody to petitioning parties when the action is based solely on a petition for joint custody arising from an agreement of the parties in which the petitioners make no allegations of dependency, neglect, delinquency, unruliness, and when there is no previous history with a Juvenile Court.

2. In light of the negative answer to Question No. 1, Question No. 2 is pretermitted.

ANALYSIS

In general, subject matter jurisdiction concerns the authority of a particular court to hear a particular controversy. *Meighan v. United States Sprint Comm. Co.*, 924 S.W.2d 632, 639 (Tenn. 1996) (citation omitted). A court's subject matter jurisdiction "relates to the nature of the cause of action and the relief sought and is conferred by the sovereign authority which organizes the court." *Landers v. Jones*, 872 S.W.2d 674, 675 (Tenn. 1994) (citing *Cooper v. Reynolds*, 77 U.S. 308 (1870); *Turpin v. Conner Bros. Excavating Co., Inc.*, 761 S.W.2d 296, 297 (Tenn. 1988)). Accordingly, subject matter jurisdiction does not depend upon the conduct or agreement of the parties. *Shelby County v. City of Memphis*, 365 S.W.2d 291, 292 (Tenn. 1963). If a court lacks

subject matter jurisdiction, it cannot enter valid and enforceable orders. *Brown v. Brown*, 281 S.W.2d 492, 497 (Tenn. 1955).

It is well-established that juvenile courts are courts of limited jurisdiction. *Stambaugh v. Price*, 532 S.W.2d 929, 932 (Tenn. 1976). Thus, as such, the Juvenile Court's subject matter jurisdiction is defined by statute. *Id.* As a tribunal created by statute, a Juvenile Court has "jurisdiction over matters relating to the care, control and custody of infants, but can exercise such jurisdiction and powers only as have been conferred on [it] by the statute creating [it]." *Hyatt v. Bomar*, 358 S.W.2d 295, 296 (Tenn. 1962) (quotation marks omitted).

Sections 37-1-103 and 37-1-104 govern the subject matter jurisdiction of the Juvenile Court. Tenn. Code Ann. § 37-1-103 grants *exclusive* original jurisdiction to the Juvenile Court in the following specific types of cases:

- (1) Proceedings in which a child is alleged to be delinquent, unruly or dependent and neglected, or to have committed a juvenile traffic offense as defined in § 37-1-146;
- (2) Deleted by 2003 Pub.Acts, c. 333, § 1, eff. July 1, 2003.
- (3) Proceedings arising under §§ 37-1-141--37-1-144;
- (4) Proceedings arising under § 37-1-137 for the purposes of termination of a home placement;
- (5) Prosecutions under § 37-1-412 or § 39-15-401 unless the case is bound over to the grand jury by the juvenile court or the defendant is originally charged with a greater offense of which violation of § 37-1-412 or § 39-15-401 is a lesser included offense;
- (6) Proceedings arising under § 49-5-5209(e); and
- (7) Proceedings in which a parent or legal guardian is alleged to have violated parental responsibilities pursuant to § 37-1-174.

(b) The juvenile court also has exclusive original jurisdiction of the following proceedings, which are governed by the laws relating thereto without regard to the other provisions of this part:

- (1) Proceedings to obtain judicial consent to employment, or enlistment in the armed services of a child, if consent is required by law;
- (2) Proceedings under the Interstate Juvenile Compact, compiled as chapter 4, part 1 of this title; and
- (3) Proceedings under the Interstate Compact on the Placement of Children, compiled as chapter 4, part 2 of this title.

Tenn. Code Ann. §§ 37-1-103(a) and (b) (Supp. 2003).

When the Juvenile Court has acquired jurisdiction of a case under Tenn. Code Ann. § 37-1-103, such jurisdiction continues until the case is dismissed, the case is transferred to another court, an adoption petition is filed, or the minor reaches 18 years of age. *Id.* § 37-1-103(c).

In turn, § 37-1-104 grants the Juvenile Court *concurrent* jurisdiction with the Circuit and Chancery Courts over the following matters:

- (1) Treat or commit a developmentally disabled or mentally ill child;
- (2) Determine the custody or appoint a guardian of the person of a child; and
- (3) Give judicial consent to the marriage of a child if consent is required by law.

(b) The juvenile court has concurrent jurisdiction with the general sessions court for the offense of contributing to the delinquency or unruly conduct of a minor as defined in § 37-1-156.

(c) The juvenile, circuit and chancery courts have concurrent jurisdiction to terminate parental or guardian rights pursuant to the provisions of title 36, chapter 1, part 1.

(d)(1)(A) The juvenile court has concurrent jurisdiction and statewide jurisdiction with other courts having the jurisdiction to order support for minor children and shall have statewide jurisdiction over the parties involved in the case.

* * *

(2) In any case in which the court has exclusive or concurrent jurisdiction to order the payment of child support, the court may issue a child support order when requested by a party

(e) The juvenile court has concurrent jurisdiction with the circuit and chancery court of proceedings arising from the 1980 Hague Convention on the Civil Aspects of International Child Abduction.

(f) Notwithstanding any provision of law to the contrary, *the juvenile court has concurrent jurisdiction with the circuit and chancery court of proceedings to establish the paternity of children born out of lawful wedlock and to determine any custody, visitation, support, education or other issues regarding the care and control of children born out of wedlock.* Nothing in this subsection shall be construed as vesting the circuit and chancery court with jurisdiction over matters that are in the exclusive jurisdiction of the juvenile court under § 37-1-103.

Tenn. Code Ann. § 37-1-104 (Supp. 2003) (emphasis added).

You have asked whether the Juvenile Court possesses jurisdiction to award joint custody or guardianship to petitioning parties when the action is based solely on a petition for joint custody and an agreement of the parties. You ask us to assume that the petition for custody makes no allegations of dependency, neglect, delinquency, parentage, or unruliness. In addition, neither the petitioners nor the child have a previous history with a Juvenile Court. Moreover, we assume that any parental rights to the child who is the subject of the petition have been extinguished and that the petitioner who possesses custody of the child has exclusive parental rights to him or her.¹

In construing statutes, when the language of a statute is unambiguous, legislative intent is derived from the plain and ordinary meaning of the statute. *State v. Wilson*, 132 S.W.3d 340, 341 (Tenn. 2004) (citing *Carson Creek Vacation Resorts v. Dep't. of Revenue*, 865 S.W.2d 1, 2 (Tenn. 1993)). In addition, statutes will not be construed in a way that will lead to an absurd result. *In re Adoption of Hatcher*, 16 S.W.3d 792, 796 (Tenn. Ct. App. 1999).

Here, based on the above assumptions, we conclude that the Juvenile Court lacks subject matter jurisdiction to act on the petition for joint custody. Sections 37-1-103 and 37-1-104, which confer exclusive and concurrent jurisdiction upon the Juvenile Court, do not explicitly or by necessary implication give the Juvenile Court the authority to award joint custody or guardianship to petitioning parties when the action is based solely on a petition for joint custody arising from an agreement of the parties in which the petitioners make no allegations of dependency, neglect, delinquency, unruliness, and when there is no previous history with a Juvenile Court. Tennessee courts have consistently held that, when “no statute explicitly or by necessary implication” gives the Juvenile Court subject matter jurisdiction, the court lacks authority to hear the case. *See, e.g., White v. State ex rel. Armstrong*, 2001 WL 134601, *2 (Tenn. Ct. App. 2001); *Terry v. Botts*, 2001 WL 173207, *7 (Tenn. Ct. App. 2001); *Baltz v. Knight*, 1998 WL 787526, *4 (Tenn. Ct. App. 1998).

We are unable to find a provision in the statutes defining the exclusive and concurrent jurisdiction of the Juvenile Court which would allow the would-be petitioners to seek joint custody based on the above factual assumptions. These statutes are very specific in nature, vesting exclusive jurisdiction upon the Juvenile Court in, for example, proceedings affecting the residency of unruly, dependent or neglected children, or in proceedings involving career level teachers. *See* Tenn. Code Ann. §§ 37-1-103(3) and (6). Likewise, the Juvenile Court possesses concurrent jurisdiction in proceedings, *inter alia*, “arising from 1980 Hague Convention on the Civil Aspects of International Child Abduction” and in proceedings to terminate parental rights. *Id.* §§ 37-1-104(e) and (f). As

¹Were this latter factual predicate different, it might present an entirely different scenario in light of a biological parent’s fundamental constitutional right to the custody, care and control of his or her child. *Stanley v. Illinois*, 405 U.S. 645, 651 (1972); *In re Swanson*, 2 S.W.3d 180, 188 (Tenn. 1999). In that event, the United States and Tennessee Constitutions require that, to interfere with the parent-child relationship, the court must make a threshold finding of parental unfitness or substantial harm to the child, *In re Swanson*, 2 S.W.3d at 188; *Hawk v. Hawk*, 855 S.W.2d 573, 579 (Tenn. 1994), based on clear and convincing evidence. *Santosky v. Kramer*, 455 U.S. 745, 768 (1982); *M.L.J. v. Johnson*, 121 S.W.3d 378, 380 (Tenn. Ct. App. 2003).

these examples show, given the specificity of the statutory grants of subject matter jurisdiction, the General Assembly certainly could have enacted the factual scenario presented in your question as an additional jurisdictional ground, if it so wished. At this time, however, the General Assembly has not enacted such a provision.

Our conclusion is buttressed and reinforced by the doctrine of *inclusio unius est exclusio alterius*, which provides that “where general words are used followed by a designation of particular things or subject to be included or excluded as the case may be, the inclusion or exclusion will be presumed to be restricted to the particular thing or subject.” *City of Knoxville v. Brown*, 260 S.W.2d 264, 268 (Tenn. 1953) (opinion on petition for rehearing). Applying this principle here leads us to conclude that the General Assembly’s inclusion of specific instances in which the Juvenile Court possesses exclusive or concurrent jurisdiction necessitates the exclusion of possible scenarios not mentioned.

We note that if the would-be petitioners in your question had alleged in their joint petition that the child for whom they sought joint custody were born out of wedlock, the Juvenile Court, as well as the Circuit and Chancery Courts, would possess concurrent subject matter jurisdiction to hear the case. *See* Tenn. Code Ann. § 37-1-104(f). In 2003, the General Assembly enacted § 37-1-104(f), *see* Pub. Acts 2003, ch. 333, § 2, eff. July 1, 2003, which expanded the Juvenile Court’s subject matter jurisdiction to cases involving the determination of “custody, visitation, support, education or other issues regarding the care and control of children born out of wedlock” Tenn. Code Ann. § 37-1-104(f). Assuming this additional factual predicate, the Juvenile Court would be in a position to assume jurisdiction over the would-be petitioners because it would be called to determine the appropriateness of joint custody for a child born out of wedlock.

In sum, by filing a joint petition for custody in the Juvenile Court, the petitioners must fit within one or more of the statutory provisions which confer upon the Juvenile Court subject matter jurisdiction to hear a case. Because the Juvenile Court’s subject matter jurisdiction is defined by statute, *Stambaugh*, 532 S.W.2d at 932, and because its ability to exercise jurisdiction is limited “by the statute creating [it],” *Hyatt*, 358 S.W.2d at 296, it is our opinion that the Juvenile Court lacks subject matter jurisdiction over the would-be petitioners in your question.

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